

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

REG-133446-03

RIN 1545-BC37

Guidance on Passive Foreign Investment Company (PFIC) Purging Elections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations, notice of proposed rulemaking, and notice of public hearing .

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register** , the IRS is issuing temporary regulations that provide certain elections for taxpayers, who in limited circumstances, continue to be subject to the excess distribution regime of section 1291 even though the foreign corporation in which they own stock is no longer treated as a PFIC under section 1297(e). The regulations are necessary to provide guidance about purging the PFIC taint for such foreign corporations. The regulations will affect U.S. persons that hold stock in a PFIC. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by March 8, 2006. Outlines of topics to be discussed at the public hearing scheduled for March 22, 2006, at 10 a.m. must be received by March 1, 2006.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-133446-03), room 5203, Internal Revenue Building, POB 7604, Ben Franklin Station, Washington, DC 20044.

Submissions may be hand delivered between the hours of 8 a.m. and 4 p.m. to

CC:PA:LPD:PR (REG-133446-03), Courier's Desk, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC, electronically via the IRS Internet site at www.irs.gov/regs or via the Federal Rulemaking Portal at <http://www.regulations.gov>

(IRS REG-133446-03). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Ethan Atticks at (202) 622-3840, concerning submissions and the hearing, LaNita Van Dyke (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:FP:S Washington, DC 20224. Comments on the collections of information should be received by February 6, 2006. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations is in §1.1297-3(c)(5)(ii). This information is required to enable the IRS to verify that a taxpayer is reporting the correct amount of income, gain or loss from that taxpayer's interest in the foreign corporation. The collections of information are mandatory. The respondents are shareholders of PFICs.

Estimated total annual reporting burden: 250 hours.

The estimated annual burden per respondent is 1 hour.

Estimated number of respondents: 250.

The estimated annual frequency of responses: one time.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** provide certain elections for taxpayers that continue to be subject to the excess distribution regime of section 1291 even though the foreign corporation in which they own stock is no longer treated as a PFIC under section 1297(e) or section 1298(b)(1). The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief

Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing is scheduled for March 22, 2006, beginning at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the “FOR FURTHER INFORMATION CONTACT” portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to this hearing. Persons who wish to present oral comments must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by March 1, 2006. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared

after the deadline for reviewing outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of this regulation is Ethan Atticks, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In §1.1291-9, paragraph (j)(2)(v) is revised to read as follows:

§1.1291-9 Deemed dividend election.

* * * * *

(j) * * *

(2) * * *

(v) [The text of the proposed amendment to §1.1291-9(j)(2)(v) is the same as the text for §1.1291-9T(j)(2)(v) published elsewhere in this issue of the **Federal Register**.]

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Par. 3. Section 1.1297-0 is revised to read as follows:

§1.1297-0 Table of contents.

[The text of proposed §1.1297-0 is the same as the text of §1.1297-0T published elsewhere in this issue of the **Federal Register**.]

Par. 4. Section 1.1297-3 is added to read as follows:

§1.1297-3 Deemed sale or deemed dividend election by a U.S. person that is a shareholder of a section 1297(e) PFIC.

[The text of proposed §1.1297-3 is the same as the text of §1.1297-3T published elsewhere in this issue of the **Federal Register**.]

Par. 5. Section 1.1298-0 is revised to read as follows:

§1.1298-0 Table of contents.

[The text of proposed §1.1298-0 is the same as the text of §1.1298-0T published elsewhere in this issue of the **Federal Register**.]

Par. 6. In §1.1298-3, paragraphs (e) and (f) are revised to read as follows:

§1.1298-3 Deemed sale or deemed dividend election by a U.S. person that is a shareholder of a former PFIC.

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(e) [The text of the proposed revision to §1.1298-3(e) is the same as the text of §1.1298-3T(e) published elsewhere in this issue of the **Federal Register**.]

(f) [The text of the proposed revision to §1.1298-3(f) is the same as the text of §1.1298-3T(f) published elsewhere in this issue of the **Federal Register**].

/s/ Mark E. Matthews

Deputy Commissioner for Services and Enforcement